

CALENDAR CALL

BEFORE THE HONORABLE BEN J. ESCH  
Superior Court Judge

Nome, Alaska  
April 20, 1998  
8:55 o'clock a.m.

## APPEARANCES:

## FOR THE PLAINTIFF:

JOHN R. VACEK  
District Attorney  
Post Office Box 160  
Nome, Alaska 99762

## FOR THE DEFENDANT:

KIRSTEN J. BEY  
Assistant Public Defender  
Post Office Box 203  
Nome, Alaska 99762

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PROCEEDINGS

2 2NOA-3763  
3 0003

4 THE CLERK: Superior Court for the Second Judicial  
5 District at Nome is now in session. The Honorable Ben Esch  
6 presiding.

7 THE COURT: Please be seated. Very well. We're on now in  
8 trial call. First, let's begin -- first let's take the matter  
9 of State of Alaska versus Edward Tocktoo. Let's see, it's case  
10 2NO-598-38 criminal. Mr. Tocktoo is present. Counsel, Ms. Bey  
11 is present, the state's represented by Mr. Vacek. What's the  
12 status of this matter?

13 MS. BEY: Your Honor, this was a case where, at the last  
14 time I had indicated there might be some issue of admissibility  
15 of prior offenses or incidents evidence, and as I got.....

16 THE COURT: Under the new 403?

17 MS. BEY: ....to looking at that it became more  
18 complicated and led to some issues of possibly need to sever  
19 counts and that sort of thing. So anyway I've just completed a  
20 motion to sever, and some issues regarding the possible use of  
21 prior offense information, and so I would be filing that at  
22 this time, and ask that this be continued to the May calendar  
23 for trial after resolution on the issues.

24 THE COURT: What's the state's position on the motion?

25 MR. VACEK: Haven't seen it yet, Judge (indiscernible -

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interrupted).....

2 THE COURT: I mean the motion to continue, not.....

3 MR. VACEK: Oh. No opposition to the motion to continue.

4 THE COURT: All right. Very well then. Without  
5 opposition, the trial in Mr. Tocktoo's matter will be set for  
6 trial call on the May calendar, and the period of time between  
7 now and May the 19th will be waived at the request of the  
8 defense, and the state will respond to the motion in a timely  
9 fashion.

10 Ms. Bey, the -- I have attached a memo from you to the  
11 clerk requesting a list of grand jurors?

12 MS. BEY: Yes.

13 THE COURT: Very well. Does the state have an opposition  
14 to releasing the name of the grand jurors who sat on this  
15 matter?

16 MR. VACEK: I just responded to this motion in Kotzebue,  
17 Judge, and the state's response was that Rule 6, I think it was  
18 a provision of it, Rule 6(i) maybe, states that grand jury  
19 proceedings, including the selection of jurors are closed  
20 proceedings, secret proceedings, and are not subject to  
21 disclosure, except as later provided in the rules, and the rule  
22 provides that the defense may have a tape of the proceeding  
23 that actually concerned him, and I think the policy reason  
24 behind the exclusion of defendants having access to juror  
25 information is to prevent harassment of individual jurors, and

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1 so the state's response in the Kotzebue case and here, is that  
2 the defendant's not entitled to a list of individual jurors.

3 THE COURT: Very well. All I want to do is find out what  
4 the position of the parties is, so -- and I'm not taking a  
5 position on it. All I'm ask Ms. Bey is, if you wish that, if  
6 you could more formally.....

7 MS. BEY: Okay.

8 THE COURT: ....make it in the form of a motion, the  
9 state can respond, and then we can -- then I'll address it at  
10 that time, rather than -- that's the only thing I wanted to  
11 talk about was -- is in the form of a motion, so I'll just make  
12 a note that you -- if you wish to, you'll follow this up with a  
13 motion.

14 MS. BEY: Okay.

15 MR. VACEK: I'll admit we're a little more concerned about  
16 it in Kotzebue, where the person asking is a pro se litigant,  
17 that -- there's some mental health issues, and -- not from the  
18 state.

19 THE CLERK: (Indiscernible) in what amount, Your Honor?

20 THE COURT: Bail was set originally in the amount of  
21 \$10,000. That amount will continue, plus conditions to be set  
22 in the event it's posted.

23 THE CLERK: Thank you.

24 (Off record)

25 0177

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